

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ANTHONY E. MACK,

Plaintiff,

v.

EDMUND G. BROWN, Governor, et
al.,

Defendants.

Case No.: 12-2517 CW (PR)

ORDER OF DISMISSAL AND
TERMINATING PENDING MOTIONS

(Docket nos. 4, 6, 7)

Plaintiff, a state prisoner incarcerated at Corcoran State Prison (Corcoran), has filed this pro se civil rights action under 42 U.S.C. § 1983, seeking declaratory and injunctive relief for an alleged unlawful criminal conviction. He has been granted leave to proceed in forma pauperis.

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. Id. § 1915A(b)(1), (2). Pro se pleadings must be liberally construed. Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1988).

Plaintiff alleges that in 1982 he was subjected to unlawful arrest, interrogation and detention, which led to his entering an invalid guilty plea in 1983. He claims the violation of his

1 constitutional rights by numerous Defendants, including the
2 attorneys who represented him, the members of the District
3 Attorney's Office who prosecuted him, and the judges who presided
4 over his criminal proceedings. He further claims that Governor
5 Brown and other state officials are aware of the constitutional
6 violations but have acted to conceal his attempts to receive
7 justice. He seeks a declaratory judgment that his conviction is
8 unlawful and immediate release from confinement.

9 Plaintiff's complaint fails to state a claim for relief under
10 § 1983. "'Federal law opens two main avenues to relief on
11 complaints related to imprisonment: a petition for habeas corpus,
12 28 U.S.C. § 2254, and a complaint under the Civil Rights Act of
13 1871, Rev. Stat. § 1979, as amended, 42 U.S.C. § 1983. Challenges
14 to the lawfulness of confinement or to particulars affecting its
15 duration are the province of habeas corpus.'" Hill v. McDonough,
16 547 U.S. 573, 579 (2006) (quoting Muhammad v. Close, 540 U.S. 749,
17 750 (2004)). Thus, to the extent a prisoner maintains he is
18 entitled to "immediate or speedier release" from confinement, such
19 a claim may be asserted only in a petition for a writ of habeas
20 corpus. See Skinner v. Switzer, 131 S. Ct. 1289, 1293 (2011)
21 (internal citation and quotation omitted).

22 Here, Plaintiff has filed a civil rights complaint but he
23 seeks relief that can be granted only by way of habeas corpus. A
24 civil rights complaint seeking habeas relief should be dismissed
25 without prejudice to bringing it as a petition for writ of habeas
26 corpus. See Trimble v. City of Santa Rosa, 49 F.3d 583, 586 (9th
27 Cir. 1995). Accordingly, the instant action is hereby DISMISSED
28 without prejudice to Plaintiff's filing a federal habeas petition

1 challenging the validity of his confinement, once he has exhausted
2 state remedies as to all claims he seeks to raise in federal
3 court.¹

4 The Clerk of the Court shall terminate all pending motions on
5 the Court's docket and close the file.

6 This Order terminates Docket nos. 4, 6 and 7.

7 IT IS SO ORDERED.

8 Dated: 10/9/2012



CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

United States District Court
For the Northern District of California

21 _____
22 ¹ In reviewing Plaintiff's complaint, the Court takes
23 judicial notice of a petition for a writ of habeas corpus that
24 Plaintiff filed in this court in 1990. See Mack v. Stainer, C 90-
25 3203 CAL (PR). The petition was denied on the merits on May 24,
26 1994. Id. Docket no. 29. The Ninth Circuit Court of Appeals
27 affirmed the denial on May 22, 1997. Id. Docket no. 37.
28 Plaintiff is informed that a second or successive federal habeas
petition containing previously raised or new claims that attack
the same conviction or sentence at issue in a prior federal habeas
petition may not be filed in the district court unless the
petitioner first obtains from the United States Court of Appeals
an order authorizing the district court to consider the petition.
See 28 U.S.C. § 2244(b)(3)(A).